

E & R AMENDMENTS TO LB 206

1                   1.     Strike the original sections and all amendments  
2     thereto and insert the following new sections:

3                   "Section 1. Sections 1 to 34 of this act shall be known  
4     and may be cited as the Developmental Disabilities Court-Ordered  
5     Custody Act.

6                   Sec. 2.   The Legislature recognizes the right of all  
7     persons, including individuals with developmental disabilities, to  
8     enjoy personal liberty and freedom. It is the public policy of the  
9     State of Nebraska to encourage persons with developmental  
10    disabilities to voluntarily choose their own services. It is also  
11    the public policy of the State of Nebraska to use guardians,  
12    preferably family members, to make and support service and  
13    placement decisions when a person with developmental disabilities  
14    is determined by a court to be incompetent, but there are  
15    instances in which the threat of harm to other persons in society  
16    is sufficient that a court should balance the rights of such person  
17    with the interests of society and place care and custody of such  
18    person with the State of Nebraska for appropriate treatment and  
19    services.

20                  Sec. 3.   The purpose of the Developmental Disabilities  
21    Court-Ordered Custody Act is to provide a procedure for  
22    court-ordered custody and treatment for a person with developmental  
23    disabilities when he or she poses a threat of harm to others.

24                  Sec. 4.   For purposes of the Developmental Disabilities

1 Court-Ordered Custody Act, the definitions in sections 5 to 16 of  
2 this act apply.

3           Sec. 5. Court means the district court in which a  
4 petition is filed pursuant to the Developmental Disabilities  
5 Court-Ordered Custody Act.

6           Sec. 6. Department means the Department of Health and  
7 Human Services.

8           Sec. 7. Developmental disability means mental  
9 retardation or a severe chronic cognitive impairment, other than  
10 mental illness, that is manifested before the age of twenty-two  
11 years and is likely to continue indefinitely.

12           Sec. 8. Independent mental health professional means a  
13 psychiatrist or psychologist with expertise in treating persons  
14 with developmental disabilities who has not previously been  
15 involved in the treatment of the subject in a significant way.

16           Sec. 9. Least restrictive alternative means a placement  
17 and services provided in a manner no more restrictive of a  
18 subject's liberty and no more intrusive than necessary to provide  
19 appropriate treatment and protect society.

20           Sec. 10. Mental retardation means a state of  
21 significantly subaverage general intellectual functioning existing  
22 concurrently with deficits in adaptive behavior which originates in  
23 the developmental period.

24           Sec. 11. Petitioner means the Attorney General or the  
25 county attorney who files a petition under section 17 of this act.

26           Sec. 12. Risk analysis means a comprehensive evaluation  
27 of a person's potential for future dangerous behavior towards

1 others, including recommendations to minimize the likelihood of  
2 harm to others in the least restrictive alternative.

3           Sec. 13. Severe chronic cognitive impairment means  
4 clinically significant difficulties in the ability to remember,  
5 think, perceive, apply sound judgment, and adequately use deductive  
6 reasoning not attributable to a mental illness.

7           Sec. 14. Subject means a person who is named in a  
8 petition filed under the Developmental Disabilities Court-Ordered  
9 Custody Act.

10           Sec. 15. Threat of harm to others means a significant  
11 likelihood of substantial harm to others as evidenced by one or  
12 more of the following: Having inflicted or attempted to inflict  
13 serious bodily injury on another; having committed an act that  
14 would constitute a sexual assault or attempted sexual assault;  
15 having committed lewd and lascivious conduct toward a child; having  
16 set or attempted to set fire to another person or to any property  
17 of another without the owner's consent; or, by the use of an  
18 explosive, having damaged or destroyed property, put another person  
19 at risk of harm, or injured another person.

20           Sec. 16. Treatment means the support and services which  
21 will assist a subject to acquire the skills and behaviors needed to  
22 function in society so that the subject does not pose a threat of  
23 harm to others and is able to cope with his or her personal needs  
24 and the demands of his or her environment.

25           Sec. 17. The Attorney General or county attorney may  
26 file a petition in the district court of the county in which a  
27 subject resides or the county in which an alleged act constituting

1 a threat of harm to others occurs. The petition shall allege that  
2 the subject is a person in need of court-ordered custody and  
3 treatment and shall contain the following:

4 (1) The name and address of the subject, if known;

5 (2) A statement that the subject is believed to be  
6 eighteen years of age or older or that the subject is a juvenile  
7 who will become eighteen years of age within ninety days after the  
8 date of filing the petition;

9 (3) The name and address of the subject's guardian or  
10 closest relative, if known;

11 (4) The name and address of any other person having  
12 custody and control of the subject, if known;

13 (5) A statement that the subject has a developmental  
14 disability and poses a threat of harm to others;

15 (6) The factual basis to support the allegation that the  
16 subject has a developmental disability; and

17 (7) The factual basis to support the allegation that the  
18 subject poses a threat of harm to others.

19 The Nebraska Evidence Rules shall apply to proceedings  
20 under the Developmental Disabilities Court-Ordered Custody Act  
21 unless otherwise specified.

22 Sec. 18. A subject has the following rights pursuant to  
23 the Developmental Disabilities Court-Ordered Custody Act:

24 (1) The right to be represented by legal counsel and to  
25 have counsel appointed if the subject cannot afford to pay the cost  
26 of counsel;

27 (2) The right to have a guardian ad litem appointed to

1 act on the subject's behalf if the court determines that he or she  
2 is unable to assist in his or her own defense;

3 (3) The right to have a timely hearing on the merits of  
4 the petition before a district court judge;

5 (4) The right to have reasonable continuances, for good  
6 cause shown, in order to properly prepare for a hearing on the  
7 petition;

8 (5) The right to testify, subpoena witnesses, require  
9 testimony before the court, and offer evidence;

10 (6) The right to confront and cross-examine witnesses;

11 (7) The right to have an expert witness of the subject's  
12 own choice evaluate the subject, testify, and provide  
13 recommendations to the court and to have such expert paid for by  
14 the county if the subject cannot afford the costs of such expert;  
15 and

16 (8) The right to have a transcript prepared for the  
17 purpose of an appeal, to appeal a final decision of the court, and  
18 to have the costs of such transcript and appeal paid by the county  
19 if the subject cannot afford such costs.

20 Sec. 19. (1) The petitioner may apply to the court to  
21 have the subject taken into emergency custody and held pending a  
22 hearing on the petition and disposition pursuant to sections 22 to  
23 26 of this act. The application for emergency custody shall be  
24 supported by affidavit or sworn testimony which establishes  
25 probable cause to believe that (a) the subject is eighteen years of  
26 age or older or will become eighteen years of age within ninety  
27 days after the date of filing the application, (b) the subject is a

1 person with a developmental disability, (c) the subject poses a  
2 threat of harm to others, and (d) if the application is not  
3 granted, substantial harm to others is likely to occur before a  
4 trial and disposition of the matter can be completed.

5 (2) If the court concludes that there is probable cause  
6 to grant the application pursuant to subsection (1) of this  
7 section, the court may issue an ex parte order granting the  
8 application. The department shall provide a recommendation of an  
9 appropriate treatment program for the subject which has available  
10 space and is willing to hold the subject in emergency custody. The  
11 court shall direct the sheriff or any other peace officer to take  
12 the subject into emergency custody and deliver him or her to the  
13 program ordered by the court to be held pending further hearing and  
14 order of the court. The order shall establish terms and conditions  
15 of the emergency placement as appropriate under the Developmental  
16 Disabilities Court-Ordered Custody Act. The department shall  
17 evaluate the subject within seven days after the date the  
18 application is granted to determine if the subject is a person with  
19 one or more developmental disabilities and poses a threat of harm  
20 to others. The results of the evaluation shall be provided to the  
21 court and all parties.

22 Sec. 20. If an emergency custody order is issued by the  
23 court under section 19 of this act, the subject has a right to an  
24 expedited hearing to challenge the order. At such hearing, the  
25 petitioner has the burden of showing that there is probable cause  
26 to continue the emergency custody order. Such hearing shall be  
27 held within ten days after the date the subject is taken into

1 emergency custody unless such requirement is waived by the subject  
2 or the subject is granted a continuance based upon his or her  
3 request. The Nebraska Evidence Rules do not apply at a hearing  
4 under this section. Upon conclusion of such hearing, the court may  
5 continue, modify, or vacate the emergency custody order.

6           Sec. 21. The petitioner shall cause notice of the  
7 petition and summons to be served on the subject, the subject's  
8 attorney, if any, the subject's guardian, if any, the subject's  
9 closest relative, if known, any other person having custody and  
10 control of the subject, if known, and the department.

11           Sec. 22. When a petition is filed under the  
12 Developmental Disabilities Court-Ordered Custody Act, the court  
13 shall ensure that the subject is represented by legal counsel and  
14 shall set a time and date for a hearing on the petition. The clerk  
15 of the court shall provide notice of the date and time of such  
16 hearing to the subject, the subject's legal counsel, the subject's  
17 guardian, if any, the subject's closest relative, if known, any  
18 other person having custody and control of the subject, if known,  
19 the petitioner, and the department. The notice of hearing on the  
20 petition shall state the date, time, and location of the hearing  
21 and shall contain a list of the subject's rights under section 18  
22 of this act. The court may order an examination and evaluation of  
23 the subject to be completed by the department prior to the hearing,  
24 and the results shall be provided to all parties. The hearing on  
25 the petition shall be held within ninety days after the date of  
26 filing the petition or, if the subject is in emergency custody  
27 pursuant to section 19 of this act, as soon as practicable but not

1 later than forty-five days from the date when the subject was taken  
2 into emergency custody unless continuances are granted by the court  
3 upon the subject's motion.

4           Sec. 23. The subject may admit or deny the allegations  
5 of the petition or choose to not answer. If the subject denies the  
6 allegations of the petition, the court shall proceed to conduct a  
7 hearing on the petition. If the subject is unable to understand  
8 the nature and possible consequences of the proceedings or chooses  
9 to not answer, the court shall enter a denial of the allegations of  
10 the petition on the subject's behalf and shall proceed to conduct a  
11 hearing on the petition. If the subject admits to the allegations  
12 of the petition, the court shall determine whether the admission is  
13 free and voluntary and, if the court finds a factual basis to  
14 support the admission, may find the subject to be a person in need  
15 of court-ordered custody and treatment.

16           Sec. 24. The petitioner has the burden to prove by clear  
17 and convincing evidence that the subject is a person in need of  
18 court-ordered custody and treatment. The court shall make specific  
19 findings of fact and state its conclusions of law.

20           If after the hearing is complete the court finds that the  
21 subject is not a person in need of court-ordered custody and  
22 treatment, it shall dismiss the petition and immediately release  
23 the subject from any emergency custody order.

24           If after the hearing is complete the court finds that the  
25 subject is a person in need of court-ordered custody and treatment,  
26 the court shall order the department to evaluate the subject and  
27 submit a plan for custody and treatment of the subject in the least



1 restrictive alternative within thirty days and provide a copy to  
2 all parties in interest. The court shall set the matter for  
3 dispositional hearing within fifteen days after receipt of the  
4 department's plan, unless continued for good cause shown.

5           Sec. 25. The plan submitted by the department pursuant  
6 to section 24 of this act shall include the evaluation and  
7 recommendations of an independent mental health professional. The  
8 independent mental health professional may have been previously  
9 involved in evaluating the subject and advising the court pursuant  
10 to the Developmental Disabilities Court-Ordered Custody Act and may  
11 also be an employee of or a contractor with the department. The  
12 plan shall include: A history of the subject's past treatment, if  
13 any; a comprehensive evaluation of the subject's developmental  
14 disabilities; a risk analysis; the treatment and staffing  
15 requirements of the subject; appropriate terms and conditions to  
16 provide custody and treatment of the subject in the least  
17 restrictive alternative; and an appropriate treatment program that  
18 is capable of providing and willing to provide treatment in  
19 accordance with the plan.

20           Sec. 26. At the dispositional hearing, the court shall  
21 consider the plan submitted pursuant to section 25 of this act, the  
22 arguments of the parties, and any other relevant evidence. The  
23 Nebraska Evidence Rules shall not apply at the dispositional  
24 hearing. The plan shall be approved by the court unless it is  
25 shown by a preponderance of the evidence that the plan is not the  
26 least restrictive alternative for the subject. After the hearing  
27 is completed, the court shall issue an order of disposition placing

1 custody of the subject with the department and setting forth the  
2 treatment plan for the subject. The court shall establish the  
3 duration of the court-ordered custody and treatment of the subject,  
4 but such duration under the initial order shall not be longer than  
5 one year.

6           Sec. 27. The court shall hold annual review hearings of  
7 each order of disposition issued under section 26 of this act prior  
8 to the expiration date of such order. Prior to the annual review  
9 hearing, the department shall submit an updated plan for custody  
10 and treatment of the subject. It shall be the burden of the state  
11 to show by clear and convincing evidence that court-ordered custody  
12 and treatment continues to be necessary. The court shall determine  
13 whether the evidence supports continuing the court-ordered custody  
14 and treatment of the subject. At the review hearing, the court  
15 shall consider the evidence received at the original and any  
16 subsequent hearings, the plan and updates submitted by the  
17 department, progress reports and recommendations from the treatment  
18 program, and any other relevant evidence. Following the review  
19 hearing, the court may continue or modify the court-ordered custody  
20 and treatment or may vacate such custody and treatment and dismiss  
21 the matter.

22           Sec. 28. (1) If at any time it appears that the subject  
23 no longer poses a threat of harm to others, any party may file a  
24 motion for a review hearing to be held as soon as practicable. The  
25 party filing the motion under this subsection shall have the burden  
26 of showing by a preponderance of the evidence that the subject no  
27 longer poses a threat of harm to others. If it is shown that the

1 subject no longer poses a threat of harm to others, the court shall  
2 enter an order dismissing the case and immediately release the  
3 subject.

4 (2) If at any time it appears that (a) the plan submitted  
5 under section 24 or 27 of this act is not sufficient to protect  
6 society or the subject or (b) the circumstances upon which the plan  
7 was based have changed significantly, any party may file a motion,  
8 to be granted for good cause shown, for a review hearing to be held  
9 as soon as practicable. The party filing the motion under this  
10 subsection shall have the burden of showing by clear and convincing  
11 evidence that the court-ordered custody and treatment of the  
12 subject should be modified or vacated.

13 Sec. 29. A court which finds a subject to be in need of  
14 court-ordered custody and treatment shall have concurrent  
15 jurisdiction to hear and decide issues regarding appointment or  
16 replacement of a guardian for as long as the subject is in  
17 court-ordered custody and treatment.

18 Sec. 30. No findings under the Developmental  
19 Disabilities Court-Ordered Custody Act, including a finding that a  
20 person is in need of court-ordered custody and treatment, shall  
21 lead to a presumption that such person is incompetent to stand  
22 trial.

23 Sec. 31. If the subject cannot afford to pay, the county  
24 shall pay court costs, costs of emergency custody, and related  
25 expenses for a petition filed pursuant to the Developmental  
26 Disabilities Court-Ordered Custody Act, including the costs of  
27 legal counsel appointed to represent the subject and any expert

1 hired to evaluate and testify on behalf of the subject. In  
2 counties having a public defender, the court may appoint the public  
3 defender as legal counsel for the subject. The county shall be  
4 responsible for the cost of transporting the subject to and from  
5 court hearings under the act and to any emergency custody or other  
6 custody ordered under the act. The department shall pay the costs  
7 of the department's evaluations of the subject, the costs of the  
8 plans completed by the department and the independent mental health  
9 professional, and the costs of the court-ordered custody and  
10 treatment of the subject following an order of disposition, except  
11 as provided by sections 83-363 to 83-380.

12           Sec. 32. Jurisdiction of the court under the  
13 Developmental Disabilities Court-Ordered Custody Act does not  
14 prohibit a subject or a subject's guardian from consenting to  
15 medical care or to a more restrictive setting, on a temporary  
16 basis, than that ordered by the court to satisfy the treatment  
17 needs of the subject.

18           Sec. 33. In the case of a juvenile in need of  
19 court-ordered custody and treatment, a petitioner may file a  
20 petition and begin proceedings under the Developmental Disabilities  
21 Court-Ordered Custody Act within ninety days before the juvenile's  
22 eighteenth birthday. No order under the act shall be effective  
23 until the subject reaches his or her eighteenth birthday.

24           Sec. 34. The department in collaboration with the  
25 Advisory Committee on Developmental Disabilities established under  
26 section 83-1212.01 shall submit quarterly reports to the court, all  
27 parties of record, and the guardian of any subject in court-ordered

1 custody.

2           The department shall submit an annual report to the  
3 Legislature regarding the implementation of the Developmental  
4 Disabilities Court-Ordered Custody Act. Such reports shall not  
5 contain any name, address, or other identifying factors or other  
6 confidential information regarding any subject.

7           Sec. 35. Section 83-1212.01, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           83-1212.01. (1) There is hereby created the Advisory  
10 Committee on Developmental Disabilities. The advisory committee  
11 shall consist of a representative of a statewide advocacy  
12 organization for persons with developmental disabilities and their  
13 families and not more than fifteen additional members, at - At  
14 least one-third of the membership whom shall be persons with  
15 developmental disabilities, at least one-third of ~~the membership~~  
16 whom shall be families of persons with developmental disabilities,  
17 and no more than one-third of ~~the membership~~ whom shall be elected  
18 officials or interested community persons.

19           (2) The members shall be appointed by the Governor for  
20 staggered terms of three years. Any vacancy shall be filled by the  
21 Governor for the remainder of the term. One of the members shall  
22 be designated as chairperson by the Governor. Members shall be  
23 reimbursed for their actual and necessary expenses as provided in  
24 sections 81-1174 to 81-1177.

25           (3) The advisory committee shall advise the department  
26 regarding all aspects of the funding and delivery of services to  
27 persons with developmental disabilities.

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1                   (4) The advisory committee shall provide sufficient  
2                   oversight to ensure that persons placed in the custody of the  
3                   department under the Developmental Disabilities Court-Ordered  
4                   Custody Act are receiving the least restrictive treatment and  
5                   services necessary.

6                   Sec. 36. Original section 83-1212.01, Reissue Revised  
7 Statutes of Nebraska, is repealed.

8                   Sec. 37. Since an emergency exists, this act takes  
9 effect when passed and approved according to law.".

10                   2. On page 1, line 1, after the semicolon insert "to  
11 amend section 83-1212.01, Reissue Revised Statutes of Nebraska;"  
12 and in line 2 after the semicolon insert "to change provisions  
13 relating to an advisory committee; to repeal the original  
14 section;".